Arent Fox

December 14, 2009

Ross A. Buntrock
Attorney
202.775.5734 DIRECT
202.857.6395 FAX
buntrock.ross@arentfox.com

VIA ECF

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Ex Parte* Presentation: WC Docket No. 07-135

Dear Ms. Dortch:

Northern Valley Communications, LLC ("Northern Valley") and Sancom, Inc. ("Sancom"), through counsel, respond to the recent, misleading *Ex Parte* letter and presentation filed by AT&T.[1] AT&T asserts that 40% of its CLEC access charge expenses are associated with 12 particular CLECs. AT&T *Ex Parte* at 5. But it cannot be an expense to AT&T until it actually pays the CLEC for terminating AT&T's customers' traffic. The reality, however, is that AT&T has assumed to itself the authority to pick and choose the traffic for which it is willing to pay terminating access charges and is systematically refusing to be "expensed" by CLECs such as Northern Valley and Sancom. At best, AT&T is conflating "expenses" with the accounting concept of "accounts payable." At worst, AT&T is misrepresenting the amount it is being unjustly enriched by withholding access charges properly owed to particular CLECs and falsely implying that it does not routinely engage in self-help. To avoid any doubt about the "expenses" associated with traffic for which AT&T is withholding payment, instead of filing meaningless pie charts and graphs, AT&T should file in this docket all of the information it has provided to Chairman Waxman in response to his October 14, 2009, request.[2]

Even assuming AT&T's "data" is accurate, its trend analysis (AT&T *Ex Parte* at 3) is meaningless without any attempt to quantify the values on the y-axis. Based on Northern Valley's and Sancom's experiences with AT&T, this graph merely charts AT&T's unpaid bills. Further, AT&T does nothing to rebut the Commission's skepticism expressed in the CLEC Access Charge Order[3] that creating the rural exemption would "add markedly to AT&T's problem[s]." AT&T *Ex Parte* at 2. Although Northern Valley and Sancom have no independent means of verifying AT&T's methodology for estimating the terminating annual MOU figures it

---

[1] Letter from Brian J. Benison, Director — Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 07-135 (December 2, 2009) ("AT&T *Ex Parte*").

[2] *See* Letter from the Honorable Henry A. Waxman, *et al.*, to Randall L. Stephenson, CEO of AT&T (October 14, 2009) (attached hereto).

[3] *Seventh Report and Order*, 16 FCC Rcd. 9923 (2001).

supplied (AT&T *Ex Parte* at 6), the 9 billion minute figure represents a statistically insignificant amount of traffic when determining geographically averaged rates when there are hundreds of billions of annual MOUs. AT&T's figures therefore merely validate the Commission's initial skepticism.

In addition, "AT&T's problems" cannot be analyzed in a vacuum. As the Commission has found, the average toll service rate per minute charged by IXCs like AT&T is 6 cents per minute.[4] Assuming AT&T's estimated terminating annual MOU figure is accurate, 9 billion MOUs thus represents over half a billion dollars in revenue to the IXCs, which is more than enough to compensate the CLECs for the valuable service they provide the IXCs by terminating their customers' calls. AT&T's "problem" therefore appears to be it is not profiting as much as it would like, not that it is actually losing money on this traffic.

At bottom, AT&T's presentation is reduced to a vehicle to see how many times it can insert the term "traffic pumping" in lieu of marshalling any credible argument that would excuse its ongoing campaign of self-help. But this term, crafted by the IXCs, has no place in this docket. Hundreds of thousands of AT&T customers choose to purchase expensive unlimited long-distance plans, and in turn, make the independent decision to place calls to the inexpensive conference calling providers which are provided local exchange service by CLECs like Northern Valley and Sancom. Neither Northern Valley and Sancom nor the conference calling providers are placing these calls, but AT&T's own customers. To call Northern Valley or Sancom a "traffic pumper" is therefore a slur that simultaneously defies the laws of physics.

In sum, how LECs such as Northern Valley and Sancom structure their customer relationships with their customers is irrelevant to AT&T. The terminating access service a LEC provides IXCs is not altered by the particular terms LECs and their customers agree upon. Access is access. It would be just as presumptuous for Northern Valley or Sancom to demand that IXCs stop offering unlimited calling plans or other promotional service offerings that drive traffic if they don't intend to pay for access to a LEC's exchange. Rather, just as the Commission held that it "continue[s] to abstain entirely from the regulating the market in which end-user customers purchase access service," CLEC Access Charge Order at 9938, ¶ 39, the Commission should not allow the IXCs to regulate a LEC's relationship with its customers by default. But that is exactly what the Commission is doing by permitting the IXCs to simply refuse to pay their bills.

---

4 *See* Reference Book of Rates, Price Indices, and House Expenditures for Telephone Service, Industry Analysis & Technology Division, Wireline Competition Bureau at iv (2008). Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284934A1.pdf.

Arent Fox

Respectfully submitted,

Ross A. Buntrock,
Counsel to Northern Valley Communications, LLC and Sancom, Inc.

RPP/363516.1

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

October 14, 2009

Mr. Randall L. Stephenson
Chief Executive Officer
AT&T
208 South Akard Street
Dallas, TX 75202

Dear Mr. Stephenson:

Recent news reports have described situations in which Internet-based voice service providers are not connecting calls to certain rural areas. According to these reports, these providers are blocking calls due to the allegedly excessive terminating access charge rates required by some rural incumbent local exchange providers (ILECs).

Several Members of Congress representing rural districts recently wrote the Federal Communications Commission (FCC) to express concern about this practice and urge an FCC investigation of Google's voice offering. These members, including several members of the Committee on Energy and Commerce, expressed concern about the impact of such practices on rural carriers and rural consumers. We share this concern about the impact of this practice on rural companies and consumers.

We believe any investigation of this matter must also examine the existing access charge regime and purported abuses of that system, including so-called "traffic pumping" schemes. According to one major carrier, these "traffic pumping schemes are designed to evade core Communications Act protections…as well as protections against the exposure of children to pornographic content."[1] Just last month, the Iowa Utilities Board found that eight local exchange companies had engaged in a traffic pumping scheme in which they were providing free calling services for indecent or pornographic content.[2] According to the Iowa Board, these companies

---

[1] Letter from James W. Cicconi to The Honorable Kevin J. Martin, (April 4, 2007).

[2] *Qwest Communications Corp. v. Superior Telephone Cooperative, et. al.*, Docket No. FCU-07-2 at 61 (available at https://efs.iowa.gov/efiling/groups/external/documents/docket/023026.pdf) (Sept. 21, 2009).

were attempting to increase access charge revenues by 10,000 percent. The cost of these schemes is substantial and impacts all consumers, not just those living in rural areas.

To assist the Committee on Energy and Commerce in its review of this matter, please provide answers to the following questions:

1. Is your company currently engaged in any disputes with rural ILECs or other rural carriers over the payment of terminating access charges?

   a. If so, please describe the nature and basis of such disputes and provide the Committee with the names of those companies and the total disputed dollar amount at issue in each dispute with each company.

   b. Please describe all steps your company has taken in these disputes. For example, is your company currently involved in litigation or regulatory proceedings related to the disputes?

2. Has your company withheld the payment of access charges relating to disagreements about the appropriate rate?

   a. If so, when did your company begin withholding payments, how much was withheld or is being withheld, and from whom?

3. What do you estimate the actual cost of terminating traffic to be on a per minute of use basis?

4. Do you charge other carriers to terminate traffic on your network? If so, how much do you charge for terminating access on a per minute of use basis? If you charge different rates in different areas, please provide a range of charges.

5. How much do you receive annually in terminating access charges?

6. How much do you pay to others in terminating access charges?

Please provide written response to these questions by October 27, 2009. In addition, please inform Committee staff by October 19, 2009, as to whether you will provide the requested information voluntarily.

If you have questions regarding this request, please contact Roger Sherman or Tim Powderly of the Committee staff at (202) 226-2424.

Sincerely,

Henry A. Waxman
Chairman

Rick Boucher
Chairman
Subcommittee on Communications, Technology, and the Internet

Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Joe Barton
Ranking Member

The Honorable Cliff Stearns
Ranking Member
Subcommittee on Communications, Technology, and the Internet

The Honorable Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations